

"HAWAII ADMINISTRATIVE RULES

TITLE 23

DEPARTMENT OF PUBLIC SAFETY

SUBTITLE 2 CORRECTIONS

CHAPTER 191

CONDITIONAL RELEASE OF PRETRIAL DETAINEES

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SUBCHAPTER 1

GENERAL PROVISIONS

§23-191-1 Definitions. As used in this chapter:

"Assessment" means the process used to gather and verify pertinent information, develop impressions and images, and check hypotheses about an offender's behavior in interaction with the community or correctional environment.

"Order" means a legal document filed in court which grants the release of a pretrial detainee, and includes all terms and conditions imposed by the director or agreed to by the pretrial detainee who is being released, or both. No order shall have the effect of or be construed as dismissing, or otherwise terminating the criminal charges pending against the pretrial detainee being released.

"Program" means a combination of departmental resources and activities designed to achieve an objective or objectives. [Eff MAR 14 1994] (Auth: HRS §35C-2; SLH 1993, Act 305) (Imp: SLH 1993, Act 305)

§23-191-2 Purpose. This chapter is intended to implement SLH 1993, Act 305, concerning the release of pretrial detainees from incarceration on an emergency basis. [Eff MAR 14 1994] (Auth: HRS §353C-2; SLH 1993, Act 305) (Imp: SLH 1993, Act 305)

SUBCHAPTER 2

RELEASE REQUIREMENTS

§23-191-3 Pre-release requirements. (a) No correctional facility shall release a pretrial detainee from incarceration under this chapter unless:

- (1) The correctional facility is a designated community correctional center facility.
- (2) The director has determined that release is necessary to prevent overcrowding which would jeopardize the orderly and secure management of the facility.

(b) Nothing in this chapter shall have the effect of, or be construed as, permitting the department to dismiss or otherwise terminate any charges pending against a pretrial offender released

from incarceration, and no order shall have such effect. [Eff MAR 14 1994] (Auth: HRS §353C-2; SLH 1993, Act 305) (Imp: SLH 1993, Act 305)

§23-191-4 Release criteria; exceptions.

(a) Pretrial detainees shall not be considered for release if they:

- (1) Have been denied bail;
- (2) Have bail of more than \$5,000;
- (3) Are charged with a serious crime involving violence;
- (4) Were convicted of a serious crime involving violence;
- (5) Are on probation or parole for a serious crime involving violence;
- (6) Are charged with a class C or misdemeanor offense involving violence and offenses that the department considers a risk to public safety; or
- (7) Have mental or substance abuse histories that render release inappropriate.

(b) Nothing in this chapter shall be construed as creating or granting any pretrial detainee the right to be released from incarceration. Pretrial detainees have no right to release. Any release under this chapter is discretionary and for the benefit of the department and the safe and orderly management of the facility. [Eff MAR 14 1994] (Auth: HRS §353C-2; SLH 1993, Act 305) (Imp: SLH 1993, Act 305)

§§23-191-5 to 8 (Reserved)

SUBCHAPTER 3

ASSESSMENT AND RECOMMENDATION

§23-191-9 Assessment. All assessments shall be made on official departmental forms and shall be maintained as official documents. [Eff MAR 14 1994] (Auth: HRS §353C-2; SLH 1993, Act 305) (Imp: SLH 1993, Act 305)

§23-191-10 Release on recognizance. Any pretrial detainee who is released shall be released on his or her own recognizance, unless the director authorizes release to a third party. [Eff MAR 14 1994] (Auth: HRS §353C-2; SLH 1993, Act 305) (Imp: SLH 1993, Act 305)

§23-191-11 Order. (a) Every release of a pretrial detainee shall be in the form of an order to be signed by the director or designated representative and acknowledged by the pretrial detainee as to the terms and conditions for release.

(b) A copy of the order, signed by the director or designated representative, shall be filed with the court having jurisdiction of the pretrial detainee.

(c) Each order shall be maintained as an official document of release and recorded with the department. [Eff MAR 14 1994] (Auth: HRS §353C-2; SLH 1993, Act 305) (Imp: SLH 1993, Act 305)

§§23-191-12 to 15 (Reserved)

SUBCHAPTER 4

CONDITIONS FOR RELEASE

§23-191-16 Terms and conditions. Any order of release granted under this chapter shall be subject to the terms and conditions set forth in section 804-7.4, HRS, and may further be subject to such terms and conditions as may be imposed at the discretion of the director or the director's designated representative. [Eff MAR 14 1994] (Auth: HRS 353C-2; SLH 1993, Act 305) (Imp: SLH 1993, Act 305)

§23-191-17 Violations. Violations of any terms or conditions of a release order shall be resolved as provided in sections 804-7.2 and

§23-191-17

804-7.3, HRS. [Eff MAR 14 1994] (Auth: §353C-2,
SLH 1993, Act 305) (Imp: SLH 1993, Act 305)

HAWAII ADMINISTRATIVE RULES

TITLE 23

DEPARTMENT OF PUBLIC SAFETY

SUBTITLE 4 CRIMINAL INJURIES COMPENSATION
COMMISSION

CHAPTER 600

ADMINISTRATIVE PROVISIONS

§23-600-1 Definitions
§23-600-2 The commission

Historical Note: Chapter 23-600, Hawaii Administrative Rules, is based substantially upon chapter 17-100, Hawaii Administrative Rules. [Eff 8/10/81; R
SEP 03 1994]

§23-600-1 Definitions. As used in these rules unless the context requires otherwise:

"Administrator" means the executive secretary of the criminal injuries compensation commission.

"Chairperson" means the chairperson of the criminal injuries compensation commission.

"Commission" means the criminal injuries compensation commission.

"Presiding Officer" means the chairperson or a designated representative. [Eff SEP 03 1994]
(Auth: HRS §351-68) (Imp: HRS §351-2)

§23-600-2 The commission. (a) The principal office of the commission is at the Old Federal Building, Honolulu, Hawaii. All communications to the commission shall be addressed to the Criminal Injuries Compensation Commission, State of Hawaii, 335 Merchant Street, Room 244, Honolulu, Hawaii, unless otherwise specifically directed.

(b) The offices of the commission shall be open from 7:45 a.m. to 4:30 p.m. of each day of the week

except Saturdays, Sundays, and holidays unless otherwise provided by statute or executive order.

(c) The commission meets and exercises its powers in any part of the State of Hawaii. All meetings of the commission shall be open to the public except that:

- (1) The commission may determine that a private meeting is necessary in particular cases involving pending criminal actions or the interests of the victim; and
- (2) The commission may meet in executive session, from which the public may be excluded, by a recorded number of votes of the members of the commission necessary to validate acts as provided in subsection (d). No order, rule, ruling contract, appointment, or decision shall be finally acted upon at such private meetings or executive session.

(d) Any two members shall constitute a quorum to transact business. An action needs two votes before it can be validated. [Eff SEP 03 1994] (Auth: HRS §351-68) (Imp: HRS §§80-1, 92-4, 92-5, 351-13)

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DEPARTMENT OF PUBLIC SAFETY

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COMMISSION

CHAPTER 601

COMMISSION RECORDS

- §23-601-1 Records
- §23-601-2 Reproduction of records
- §23-601-3 Confidential information

Historical Note: Chapter 23-601, Hawaii Administrative Rules, is based substantially upon chapter 17-101, Hawaii Administrative Rules. [Eff 8/10/81; R

SEP 03 1994]

§23-601-1 Records. Unless entitled to confidential treatment pursuant to section 23-601-3, state or federal law, commission records, such as rules, regulations, opinions, orders, and meeting minutes shall be made available for inspection to the public during established office hours. [Eff SEP 03 1994] (Auth: HRS §351-68) (Imp: HRS §92-50)

§23-601-2 Reproduction of records. Except as otherwise provided in this chapter, records printed or reproduced by the commission shall be given to any person requesting the same upon payment of any fees established by the commission or by law. [Eff SEP 03 1994] (Auth: HRS §351-68) (Imp: HRS §92-21)

§23-601-3 Confidential information. Disclosure of information relating to the psychiatric, medical,

§23-601-3

personal history, and law enforcement or
criminal investigative reports will not be permitted
unless required by court order with jurisdiction in a
case arising from an application filed with the
commission or otherwise provided by state or federal
statute. [Eff SEP 03 1994] (Auth: HRS §351-68)
(Imp: HRS §92F-22)

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DEPARTMENT OF PUBLIC SAFETY

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COMMISSION

CHAPTER 602

RULEMAKING PROCEEDINGS

§23-602-1	Notice of proposed rulemaking
§23-602-2	Emergency rulemaking
§23-602-3	Petitions for adoption, amendment, or repeal of rules
§23-602-4	Special proceedings

Historical Note: Chapter 23-602, Hawaii Administrative Rules, is based substantially upon chapter 17-102, Hawaii Administrative Rules. [Eff 8/10/81; R

SEP 03 1994]

§23-602-1 Notice of proposed rulemaking. (a) When upon its own motion, the commission proposes to adopt, amend, or repeal a rule, a notice of proposed rulemaking shall be published at least once in a newspaper of general circulation in the State. All such notices shall be issued at least thirty days prior to the date of hearing. In addition, a notice shall be placed in a newspaper of general circulation in each county; provided that such notice need not comply with the above thirty day requirement.

(b) Notice of proposed adoption, amendment, or repeal of a rule shall include:

- (1) The date, time, and place where the public hearing will be held and where interested persons may be heard on the proposed rule adoption, amendment, or repeal;
- (2) Reference to the authority under which the adoption, amendment, or repeal of a rule is proposed;

- (3) A statement of the substance of the proposed rulemaking; and
 - (4) A docket number specifically assigned to rulemaking hearing.
- (c) In any rulemaking proceeding where the commission deems it warranted, a further notice of proposed rulemaking shall be issued by publication in a newspaper of general circulation in the State. [Eff SEP 03 1994] (Auth: HRS §351-68) (Imp: HRS §§91-3, 92-41)

§23-602-2 Emergency rulemaking. Notwithstanding the chapter 23-601, if the commission finds that an imminent peril to public health, safety, or morals requires adoption, amendment, or repeal of a rule upon less than thirty days' notice of hearing, and states in writing the reason for such finding, it may proceed without prior notice of hearing or upon such abbreviated notice and hearing as it finds practicable to adopt not longer than one hundred twenty days without renewal. [Eff SEP 03 1994] (Auth: HRS §351-68) (Imp: HRS §91-3)

§23-602-3 Petitions for adoption, amendment, or repeal of rules. (a) Any interested person or any agency of the State or county government may petition the commission for the adoption, amendment, or repeal of any rule.

(b) Petitions for rulemaking shall:

- (1) Set forth the text of any proposed rule or amendment desired or specify the rule the repeal of which is desired;
- (2) State concisely the nature of the petitioner's interest in the subject matter;
- (3) Set forth the reasons for seeking the adoption, amendment, or repeal of the rule; and
- (4) Include any acts, opinions, arguments, and data deemed relevant by petitioner.

(c) The commission may require the petitioner to give copies to persons or governmental agencies known to be interested in the proposed rulemaking. No request for the adoption, amendment, or repeal of a rule which does not conform to the above requirements

will be considered by the commission.

(d) Petitions for rulemaking shall become matters of public record upon filing with the commission. The commission shall within thirty days following the filing of the petition either deny the petition in writing or initiate public rulemaking procedures. No public hearing, oral argument, or other form of proceedings need be held directly on any such proceeding, but if the commission determines that the petition discloses sufficient reasons in support of the relief requested to justify the institution of public rulemaking proceedings, the procedures to be followed shall be as set forth in this section. Where the commission determines that the petition does not disclose sufficient reasons to justify the institution of public rulemaking procedures, or where the petition for rulemaking fails in any material respect to comply with the requirements of these rules, the petitioner will be so notified together with the grounds for such denial. This section shall not operate to prevent the commission, on its own motion, from acting on any matter disclosed in any petition. [Eff SEP 03 1994]
(Auth: HRS §351-68) (Imp: HRS §91-6)

§23-602-4 Special proceedings. (a) On petition of an interested person, the commission may issue a declaratory order as to the applicability of any statutory provision or of any rule or order of the commission. Petitions for the issuance thereof shall:

- (1) State clearly and concisely the controversy or uncertainty;
- (2) Cite the statutory authority involved; and
- (3) Include a complete statement of the facts and the reasons or ground prompting the petition, together with full disclosure of petitioner's interest.

(b) The commission, upon receipt of the petition, may require the petitioner to file additional data or a memorandum of legal authorities in support of the position taken by the petitioner.

(c) The commission may, without notice of hearing, dismiss a petition for declaratory ruling which fails in any material respect to comply with the requirements of chapter 23-602.

(d) Although in the usual course of disposition of a petition for a declaratory ruling no formal hearing need be held, any petitioner or party in interest who desires a hearing on a petition for declaratory ruling shall set forth in detail in their request the reasons why a hearing is necessary for the fair and expeditious disposition of the petition. In the event a hearing is ordered by the commission, section 91-3, Hawaii Revised Statutes, shall govern the proceedings.

(e) Notwithstanding the other provisions of this chapter, the commission may, on its own motion or upon request, both without notice or hearing, issue a declaratory order to terminate a controversy or to remove uncertainty. [Eff **SEP 03 1994**] (Auth: HRS §351-68) (Imp: §§91-8, 91-9)

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COMMISSION

CHAPTER 603

CONDUCT OF CONTESTED CASE HEARING

- §23-603-1 Public hearing
- §23-603-2 Presiding officer
- §23-603-3 Continuance of hearing
- §23-603-4 Order of proceeding
- §23-603-5 Submission of evidence
- §23-603-6 Oral and written presentation at hearing
- §23-603-7 Transcript of evidence
- §23-603-8 Commission action

Historical Note: Chapter 23-603, Hawaii Administrative Rules, is based substantially upon chapter 17-103, Hawaii Administrative Rules. [Eff 8-10-81; R

SEP 03 1994]

§23-603-1 Public hearing. A public hearing shall be held as provided by law. The hearing may be closed to the public as provided by statute. [Eff SEP 03 1994] (Auth: HRS §351-68) (Imp: HRS §351-14)

§23-603-2 Presiding officer. Each such hearing shall be presided over by the chairperson of the commission or by a designated representative. The hearing shall be conducted in such a way as to afford all interested persons a reasonable opportunity to be heard on matters relevant to the issues involved and to obtain a clear and orderly record. [Eff SEP 03 1994] (Auth: HRS §351-68) (Imp: §351-14)

§23-603-3 Continuance of hearing. The hearing shall be held at the time and place set forth in the notice of hearing, but may at the time and place be continued from day to day or adjourned to a later date or to a different place without notice other than the announcement thereof at the hearing. [Eff
SEP 03 1994] (Auth: HRS §351-68) (Imp: §91-3)

§23-603-4 Order of proceeding. At the commencement of the hearing, the presiding officer shall read the pertinent portions of the notice of hearing and shall then outline briefly the procedure to be followed. Evidence shall then be received with respect to the matters specified in the notice of hearing in such order as the presiding officer shall prescribe. [Eff SEP 03 1994] (Auth: HRS §351-68)
(Imp: HRS §351-14)

§23-603-5 Submission of evidence. All interested persons shall be given reasonable opportunity to offer evidence with respect to the matters specified in the notice of hearing. Every witness shall, before proceeding to testify, state the witness' name, address, and whom they represent at the hearing, and shall give such other information respecting the witness' appearance as the presiding officer may request. The presiding officer shall confine the evidence to the matters specified in the notice of hearing but shall not apply the formal rules of evidence. Every witness shall be subject to questioning by the commission, and the applicant shall have the right to produce evidence and to cross-examine witnesses, but cross-examination by private persons shall not be permitted unless the presiding officer expressly permits it. [Eff SEP 03 1994] (Auth: HRS §351-68) (Imp: HRS §351-14)

§23-603-6 Oral and written presentation at hearing. All interested persons or agencies of the State or of a political subdivision of the State shall be afforded an opportunity to submit evidence or arguments which are relevant. In addition, or in lieu thereof, persons or agencies may also file with the

commission within fifteen days following the close of public hearing a written protest or other comments or recommendation in support of or in opposition to the proposed rulemaking. Written protest, comments, recommendation, or replies will not be accepted unless an original and ten copies are filed. The period for filing written protests, comments, or recommendations may be extended by the presiding officer for good cause. [Eff SEP 03 1994] (Auth: HRS §351-68) (Imp: HRS §91-3)

§23-603-7 Record of the hearing. Unless otherwise specifically ordered by the commission or the presiding officer, testimony given at the hearing need not be reported verbatim. All supporting written statements, maps, charts, tabulations, or similar data offered in evidence at the hearing, which are deemed by the presiding officer to be authentic and relevant, shall be received in evidence and made part of the record. Ten copies of the exhibit shall be submitted, unless the presiding officer finds the furnishing of the required number of copies impracticable and reduces the number. [Eff SEP 03 1994] (Auth: HRS §351-68) (Imp: HRS §351-14)

§23-603-8 Commission action. At the close of the final public hearing, the commission shall announce the decision or the date when its decision will be announced. The decision shall be signed by the chairperson or, in the chairperson's absence, by two members of the commission. [Eff SEP 03 1994] (Auth: HRS § 351-68) (Imp: HRS §91-3)

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SUBTITLE 4 CRIMINAL INJURIES COMPENSATION
COMMISSION

CHAPTER 604

CRIMINAL INJURIES COMPENSATION ACT

§23-604-1	Definitions
§23-604-2	Statement of nondiscrimination
§23-604-3	Compensation
§23-604-4	Victim claims: eligibility for compensation
§23-604-5	Good samaritan claims: eligibility for compensation
§23-604-6	Applications and other documents
§23-604-7	Delegation to administrator
§23-604-8	Medical examination
§23-604-9	Notice; hearings
§23-604-10	Computation of time
§23-604-11	Order of award
§23-604-12	Medical expenses
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§23-604-14	Lost earnings
§23-604-15	Pecuniary loss
§23-604-16	Reduction or denial of awards
§23-604-17	Reconsideration by commission; judicial review

Historical Note: Chapter 23-604, Hawaii Administrative Rules, is based substantially upon Chapter 17-104, Hawaii Administrative Rules. [Eff 8/10/81; R SEP 03 1994]

§23-604-1 Definitions. As used in this chapter: "Child" means an unmarried person who is under eighteen years of age and includes a step-child or an adopted child.

"Dependents" means such relatives of a deceased

victim who were wholly or partially dependent upon the victim's income at the time of victim's death or would have been so dependent but for the incapacity due to the injury from which the death resulted and shall include the child of such victim born after victim's death.

"Designated person" means a person who made payments for funeral, burial, and medical expenses on behalf of a victim.

"Good cause" means that an applicant must show by credible evidence that a mental, physical, or legal impairment, or an actual or reasonably perceived fear, or threat, or coercion actually prevented the filing of an application within the required period. Good cause may not be established by ignorance of the law, incarceration, or negligent failure to ascertain the facts giving rise to a claim.

"Good samaritan claim" means a claim brought pursuant to section 351-51, Hawaii Revised Statutes.

"Incurred expenses" means any expenditure in cash or in kind.

"Injury" means actual bodily harm, and includes pregnancy resulting from a criminal sexual assault and mental or nervous shock and "injured" has a corresponding meaning.

"Minor" shall have the same definition as child.

"Private citizen" means any natural person other than a peace officer actively engaged in the performance of official duties whether off or on duty.

"Relative" means a victim's spouse, parent, grandparent, stepfather, stepmother, child, grandchild, brother, sister, half brother, half sister, or spouse's parents.

"Resident" means a person who maintains a permanent abode in this State.

"Responsible person" means a person who has the legal responsibility to maintain or support the victim.

"Substantial enrichment" means economic gain that would benefit the offender. It does not mean minimal or inconsequential benefits.

"Victim" means a person who is injured or killed by any act or omission of any other person coming within the criminal jurisdiction of the State and includes a resident of this State who is injured or killed in another state which does not have a crime victim compensation program, but does not include a

peace officer who is actively engaged in the performance of official duties whether on or off duty.

"Victim claims" means claims brought pursuant to section 351-32, Hawaii Revised Statutes. [Eff

SEP 03 1994] (Auth: HRS §351-68) (Imp: HRS §351-2)

§23-604-2 Statement of nondiscrimination. It is the policy of the department of public safety, criminal injuries compensation commission that no person shall, on the grounds of race, color, religion, sex, national origin, age, handicap, sexual orientation or marital status be excluded from participation in be subjected to discrimination when making their claim for compensation. [Eff

SEP 03 1994] (Auth: HRS §351-68) (Imp: HRS §351-68)

§23-604-3 Compensation. The payment of any claim brought under section 351, Hawaii Revised Statutes, shall be at the discretion of the commission and shall not exceed \$10,000 per occurrence. Payment of compensation to the dependents of the deceased victim shall not, in the aggregate, exceed \$10,000. Compensation will only be paid for those types of losses and injuries recognized by statute. [Eff

SEP 03 1994] (Auth: HRS §351-68) (Imp: HRS §§351-51, 351-62)

§23-604-4 Victim claims: eligibility for compensation. (a) Compensation may be paid to those persons identified in subsection (b) when any private citizen is injured or killed by an act or omission of any person coming within the criminal jurisdiction of this State or when the resident of this State is injured or killed in a state without a crime compensation law or victims of Federal crimes occurring within the State.

(b) The following persons are eligible to apply for compensation for loss or injury resulting from the commission of a covered crime:

- (1) Any victim, or if the victim is a child or incompetent, a parent or authorized guardian of the child or incompetent or such other person authorized to administer the estate

- (2) Any person financially responsible for the maintenance of the victim who has suffered pecuniary loss or incurred expenses as a result of the victim's injury or death;
- (3) In the event of death of the victim, any one or more of the dependents of the deceased victim; and
- (4) A parent of an adult deceased victim or an adult son or daughter of a deceased victim, where the parent or adult son or daughter has incurred expenses as a result of the victim's death.

(c) Covered crimes are crimes for which compensation will be paid in accordance with section 351-32, Hawaii Revised Statutes.

(d) The applicant who makes a claim on behalf of dependents must have legal custody of the dependents or be otherwise legally authorized to act on the dependent's behalf. The commission may require proof of such authority.

(e) An order for compensation may be made whether or not any person is prosecuted for or convicted of a crime as set forth in section 351-32, Hawaii Revised Statutes, provided that an arrest has been made or the crime has been reported to the police without undue delay.

(f) Compensation may be awarded for:

- (1) Medical expenses;
- (2) Loss of support or earnings;
- (3) Attorneys fees;
- (4) Funeral and burial expenses; and
- (5) Pain and suffering. [Eff **SEP 03 1994**]
(Auth: HRS §351-68) (Imp: HRS §351-38)

§23-604-5 Good samaritan claims: eligibility for compensation. (a) Compensation may be paid to those persons identified in subsection (b) when any private citizen has incurred injury or property damage while assisting or preventing the commission of a crime within the State, while apprehending a person who has committed a crime within the State, or while materially assisting a peace officer who is engaged in the prevention or attempted prevention of such a crime or the apprehension or attempted apprehension of such person.

(b) Claims may be made by a private citizen, or, if, incompetent, or a child, by the private citizen's parent or legal guardian or by any person responsible for the maintenance of the private citizen who has suffered pecuniary loss or incurred expenses as a result of the private citizen's injury.

(c) Compensation may be awarded for:

- (1) Expenses actually and reasonably incurred as a result of the injury;
- (2) Pain and suffering;
- (3) Lost earnings; and
- (4) Pecuniary loss resulting directly from damage to the private citizen's property. [Eff
SEP 03 1994] (Auth: HRS §351-68)
 (Imp: HRS §351-31)

§23-604-6 Applications and other documents. (a) Any eligible person who seeks compensation under this chapter shall file a written application on an official application form with the commission. The application may be sent by mail or hand-carried to the commission office. The postmark date shall be deemed to be the date of filing.

(b) The commission may require statements of the facts surrounding the claim and may require a certification of all supporting statements. The statements may include, among other things, information regarding recovery from other sources, amount of expenses incurred and dates of hospitalization or medical treatment.

(c) All applications for compensation shall be made within eighteen months after the date of injury, death or property damage. Upon a showing of good cause, the commission may consider applications beyond this time period. To establish "good cause" for the failure to timely file an application, an applicant must show by credible evidence that a mental, physical, or legal impairment, or actual or perceived fear, or threat, or coercion actually prevented filing within the required period. Good cause may not be established by ignorance of the law, incarceration, or negligent failure to ascertain the facts giving rise to a claim. Good cause applies to all claims for injuries or damages incurred after June 7, 1989, provided the commission may consider good cause for claims involving

injuries resulting from sexual assault or sexual abuse suffered prior to June 7, 1989, if the victim was a minor at the time of the sexual assault or sexual abuse.

(d) All applications and other documents must be typewritten, or legibly printed and signed in ink by the party submitting the same. The signature of the person signing the document or application constitutes a certification that the person read the document, and that to the best of the person's knowledge, information, and belief every statement contained in the document is true and no such statements are misleading.

(e) The commission may disregard any application or document which does not substantially conform with applicable rules as to required content and form, or is otherwise insufficient. If permitted, any amendment shall be effective as of the date of the original filing. [Eff **SEP 03 1994**] (Auth: HRS §351-68) (Imp: HRS §351-68)

§23-604-7 Delegation to administrator. (a) The commission may assign cases to the administrator for determination of eligibility and any order for compensation if:

(1) The case can be adjudicated appropriately on the basis of available records and documents; and

(2) The applicant has waived a hearing before the commission and elects to proceed before the Administrator.

(b) If the applicant fails to make an election within 21 days of the mailing of an election form, the decision will be rendered by the Administrator.

[Eff **SEP 03 1994**] (Auth: HRS 351-68) (Imp: HRS §351-68)

§23-604-8 Medical examination. The commission may require a medical examination by an impartial licensed physician who shall make a report to the commission. The fees for such examination shall be paid by the commission. The commission may request a treatment plan from an attending service provider to determine appropriateness of the treatment, the connection of the treatment to the crime and portion

for which the commission will be responsible for. The treatment plan will include, but not be limited to, information concerning the beginning date of treatment, the anticipated or actual date of termination, initial diagnosis, measurable treatment goals, and information on any pre-existing condition. If any pre-existing condition exists, the service provider shall provide information on the percentage of treatment and costs that are directly related to the incident. The commission may approve treatment plans that are in duration of less than six months. In the event that the treatment continues beyond six months, the service provider shall submit a new treatment plan every six months for the commission's review. [Eff

(Imp: HRS §351-15) SEP 03 1994] (Auth: HRS §351-68)

§23-604-9 Notice; hearings. (a) Notwithstanding any other provision in this subtitle, with respect to all applications filed under this chapter, the commission shall conduct a hearing in accordance with this chapter and section to determine eligibility for compensation as soon as practically possible after the receipt of an application. The commission shall give written notice of the hearing to the applicant. Such written notice shall be given or mailed by first class mail to the parties not less than ten days prior to the date set for hearing on the application and shall state the date, time, and place of the hearing. The hearing may be continued from day to day or adjourned to a later date with notice. All hearings shall be open to the public, provided that the commission may determine that the hearing, or a portion thereof, be held in private if the offender has not been convicted or if it is in the interest of the victim.

(b) The hearing shall be tape recorded and the tape will be retained by the commission for twelve months.

(c) The hearing shall be conducted by the chairperson or a designated representative. Any two members shall constitute a quorum. Any member of the commission may administer oaths or affirmations to witnesses appearing before the commission. The commission shall have powers of subpoena, compulsory

attendance of witnesses, production of documents, and examination of witnesses. The commission may receive in evidence any statement, document, information, or matter that may in the opinion of the commission contribute to its functions whether or not such statement, document, information, or matter would be admissible in a court of law. [Eff SEP 03 1994] (Auth: HRS §351-68) (Imp: HRS §§351-13, 351-14)

§23-604-10 Computation of time. (a) Except for the eighteen month period for timely filing of a claim application, in computing any period of time, which is prescribed or allowed by this subtitle or any order, the first day shall be excluded and the last included, unless the last day is a Sunday or official state holiday, and then it shall also be excluded and the last day shall be the next business day following.

(b) The time for filing an application shall be calculated as illustrated in the following examples:

Example of timely application:

Date of receipt of application	1990	07	01
Date of crime	1989	01	01
	<hr/>		
Total time lapsed	01	06	00

Example of untimely application:

Date of receipt of application	1990	07	02
Date of crime	1989	01	01
	<hr/>		
Total time lapsed	01	06	01

[Eff SEP 03 1994] (Auth: HRS §351-68) (Imp: HRS §351-29)

§23-604-11 Order of award. (a) Except as otherwise provided in section 23-604-2, any order for the payment of compensation under this section may be made on such terms as the commission deems appropriate. All orders for the payment of compensation shall contain words clearly informing the person that all awards and orders for payment are subject to

appropriation by the legislature.

(b) The order of priority for payment of claims shall be as follows:

- (1) Medical expenses;
- (2) Funeral and burial expenses if permitted by statute;
- (3) Lost earnings;
- (4) Pecuniary loss; and
- (5) Pain and suffering. [Eff SEP 03 1994]
(Auth: HRS §351-68) (Imp: HRS §351-33)

§23-604-12 Medical expenses. Medical expenses are those expenses directly related to the incident which include:

- (1) Hospitalization;
- (2) Home nursing care;
- (3) Plastic surgery (scar revision);
- (4) Air and ground ambulance service;
- (5) Air transportation for the victim to travel to another island for medical treatment. The victim's attending physician must certify in writing that the treatment or services are inadequate or unavailable on the victim's island or residence;
- (6) Prescription drugs;
- (7) Eyeglasses, contact lens, dentures, and prosthetics if damaged in the crime;
- (8) Chiropractic treatment;
- (9) Physical and psychological therapy; and
- (10) Replacement services if the victim is unable to perform household tasks such as yard, housekeeping, child care, and home nursing care as evidenced by a doctor's certificate of disability.
- (11) Out-patient physician care.
- (12) Other appropriate medical care.
[Eff SEP 03 1994] (Auth: HRS §351-68)
(Imp: HRS §351-33)

§23-604-13 Funeral expenses. (a) The commission will consider all reasonable customary funeral expenses up to \$3,000. Any amounts in excess of the \$3,000 must be determined to be necessary expenses. Funeral and burial expenses include:

- (1) All customary mortuary costs; and
- (2) All customary cemetery costs.

Examples of customary costs include funeral services, use of facilities, flowers, vases, clothing for deceased, transportation costs for shipment of deceased victim to another area for burial, and death certificates.

(b) The expenses which are not reasonable customary expenses and which will not be considered for compensation include:

- (1) Transportation, housing, and informing distantly located family members of the death of the victim or their attendance at the funeral; or
- (2) Property damage because of the death of the victim. [Eff **SEP 03 1994**] (Auth: HRS §351-68) (Imp: HRS §351-33)

§23-604-14 Lost earnings. (a) Persons may be compensated for lost earnings. Factors to determine lost earnings include:

- (1) Whether the person was employed at the time of the incident;
- (2) The income (including tips) after the deductions of state, federal, and FICA taxes;
- (3) Substantiation from the person's employer of the payment or nonpayment of wages during the period of disability;
- (4) Substantiation from the self-employed person of gross income. The supporting documents must be originals or certified copies of originals. The documents to support a claim will include, but are not limited to, general excise tax returns and Schedule C income tax returns; and
- (5) The nature and period of disability, which must be certified by a medical or mental health service provider.
- (6) If a medical certificate is not submitted, the lost earnings will be limited to four days.

(b) If no evidence is presented, the claim for lost earnings will be denied. [Eff **SEP 03 1994**] (Auth: HRS §351-68) (Imp: HRS §351-33)

§23-604-15 Pecuniary loss. The minimum award for lost support will be \$1,000 per dependent. The applicant must provide evidence to establish that an award in excess of \$1,000 is necessary and essential for the maintenance and well being of the child. Factors to determine dependency include:

- (1) Whether the person was receiving financial support and living in the same household as the victim at the time of victim's death;
- (2) Whether an adult child was receiving financial support due to full time attendance in school or because of a physical or psychological disability. Proof of guardianship is required for the physical or psychologically dependent adult child; or
- (3) Whether the person was receiving court-ordered child support or alimony. [Eff
SEP 03 1994
HRS §351-33] (Auth: HRS §351-68) (Imp: HRS §351-33)

§23-604-16 Reductions or denials of awards.

(a) In determining whether an award will be reduced or denied, the following may be considered:

- (1) Whether an award will substantially enrich the offender;
- (2) Whether a person fails to utilize legal remedies (temporary restraining order, etc.);
- (3) Whether a person was involved in an illegal activity which was the contributing cause of his death or injury;
- (4) Whether a person who fails without good cause to cooperate with law enforcement officials and the prosecuting attorney in providing information that was in the knowledge or possession of the person which is related to the crime that was necessary for the apprehension or prosecution of the offender;
- (5) Whether a person who fails to cooperate with the commission in providing any requested information as necessary to make an award brought forward under sections 351-33 and 351-52, Hawaii Revised Statutes;
- (6) Whether a person's use of provocative words or actions, just prior to his death or injury;

- (7) Whether, in vehicular crimes, an adult victim knowingly and willingly entered a motor vehicle of the offender whom the victim knew or reasonably should have known to be under the influence of drugs or alcohol or otherwise impaired; or
 - (8) Any other relevant reason.
- (b) Awards may be reduced or denied by the receipt of collateral source payments such as:
- (1) Temporary disability insurance benefits;
 - (2) Workers' compensation insurance benefits;
 - (3) Unemployment insurance benefits;
 - (4) Employer, union, or other group death or disability benefits/pension;
 - (5) No-fault insurance benefits;
 - (6) Proceeds from civil action;
 - (7) Restitution from the offender; or
 - (8) Medical or other insurance payments. [Eff
SEP 03 1994] (Auth: HRS §351-68)
(Imp: HRS §§351-33, 351-35)

§23-604-17 Reconsideration by commission;
judicial review. (a) The commission may, at any time, on its own motion or in the application of any person aggrieved, reconsider the order or decision and revoke, confirm, or vary the order or decision, based upon the commission's findings. The reconsideration should include the reasons for disagreement and any new evidence that was not available at the initial hearing. The commission may grant or deny the reconsideration without a hearing or may notify the person to appear at a designated place and time for a hearing. A person will be limited to one reconsideration which must be received within thirty days after the service of an original or certified copy of such order or decision. A denial of a reconsideration shall not be subject to further administrative review.

(b) Any person aggrieved by an order or decision of the commission on the sole ground that the order or decision was in excess of the commission's authority or jurisdiction, shall have a right of appeal to the circuit court in the circuit in which the person resides, provided the appeal shall be filed within thirty days after service of an original or a certified

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copy of such order or decision. [Eff SEP 03 1994]
(Auth: HRS §351-68) (Imp: HRS §351-17)

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